IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

OP.No. 7699 of 1999(N)

PETITIONER:

AYSHA HOSIERY FACTORY PVT. LTD., POST PALAPARAMBA, TELLICHERRY TALUK, KANNUR, REP. BY ITS MANAGING DIRECTOR, T.T.P.MUHAMMED

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.V.KRISHNA MENON
SRI.P.V.LOHITHAKSHAN

RESPONDENTS:

---

1. THE TALUK LAND BOARD, TELLICHERRY.
2. THE DISTRICT COLLECTOR, KANNUR.
3. THE TAHSILDAR, TELLICHERRY.
4. THE STATE OF KERALA, REP. BY THE CHIEF SECRETARY TO THE GOVERNMENT, SECRETARIAT, TRIVANDRUM

BY GOVERNMENT PLEADER SRI.K.J.MOHAMMED ANSAR.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

OP.NO.7699/1999

ORDER ON CMP.NO.12899/1999 IN O.P.NO.7699/1999

DISMISSED

18.12.2006 SD/- PIUS C.KURIAKOSE, JUDGE

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PROCEEDINGS OF THE TALUK LAND BOARD DT.10.7.75

EXT.P2 – TRUE COPY OF ORDER DT.25.2.76 IN CRP.1288/75

EXT.P3 – TRUE COPY OF JUDGMENT IN OP.2372/79

EXT.P4 – TRUE COPY OF NOTICE DT.25.7.95 ISSUED BY THE DISTRICT COLLECTOR

EXT.P5 – TRUE COPY OF WRITTEN OBJECTION DT.29.9.95 SUBMITTED BY PETR. BEFORE R2.

EXT.P6 – TRUE COPY OF NOTICE DT.29.12.98 ISSUED BY R1.

EXT.P6(A) – TRUE COPY OF DRAFT STATEMENT OF LANDS TO BE SURRENDERED ISSUED BY R1.

RESPONDENTS' EXTS:

EXT.R1(a) – TRUE COPY OF LETTER DT.8.9.97.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

.....

O.P.No.7699 OF 1999

.....

DATED THIS THE 18TH DECEMBER, 2006

J U D G M E N T

The petitioner-Company which runs an industry in Kannur District owns and holds 358.19 acres of land. According to the petitioner, the entirety of the above land is liable to be exempted from the ceiling provisions of the Kerala Land Reforms Act under Section 81 (1)(c) and 81(1)(k) of the Act. A return claiming such exemption was submitted before the 1st respondent-Taluk Land Board. The 1st respondent by Ext.P1 proceedings dated 10.7.1975 allowed exemption in respect of 171.34 acres under Section 81(1)(c) holding that so much extent of land was being utilised and required for the convenient management of the industry. Aggrieved by the refusal to exempt the whole of the land and the direction to surrender 171.85 acres, the petitioner filed C.R.P.No.1288 of 1975 which was allowed by this Court by Ext.P2 order dated 25.2.1976. The petitioner submits that the order of the 1st respondent under Ext.P1 exempting 171.34 acres has attained finality. In 1979 the 2nd respondent, the District Collector, Kannur issued notice to the petitioner purportedly under Section 81(1) (k) of the Act alleging that the petitioner had not utilised the property

set apart for industrial/commercial purposes. That notice was challenged by the petitioner before this Court and this Court under Ext.P3 judgment quashed the said notice on the ground that the same is in violation of principles of natural justice. Thereafter, in 1981 also the 2nd respondent issued another notice under the proviso to Section 81(1)(k) against the petitioner which was also quashed by this Court by the judgment in O.P.No.6335 of 1981 on the ground that the same was in violation of the specific directions given by this Court in Ext.P3 judgment. Later, in July, 1985 the 2nd respondent issued another show-cause notice to the petitioner under Section 81(1)(k). Ext.P4 is copy of that notice. Against Ext.P4 the petitioner submitted Ext.P5 objections together with supporting annexures. After submitting Ext.P5, the petitioner appeared through lawyer and argued the matter before the 2nd respondent on 24.1.1996. The petitioner submits that to the best of their knowledge, the 2nd respondent has not passed order pursuant to Ext.P4 notice. After considering Ext.P5 and the oral submissions addressed, to the petitioner's surprise they were served with notice of the 1st respondent-Taluk Land Board reopening the ceiling case and posting the case on 9.3.1999 for appearance of the petitioner and hearing. Exts.P6 and P6(a) are copies respectively

of the notice and the draft statement. The draft statement contains the entire extent of 358.19 acres of land belonging to the petitioner-Company and the petitioner impugns Exts.P6 and P6(a) on various grounds and prays that Exts.P6 and P6(a) be quashed.

2. On behalf of the 1st respondent-Taluk Land Board, the Government Pleader has filed a statement justifying the action of the District Collector. It is stated therein that in view of the observations in the judgment of this Court in O.P.6335 of 1981, the District Collector conducted site inspection with notice to parties and issued fresh notice under the proviso to Clause (k) of sub-section (1) of Section 81 of the Kerala Land Reforms Act, 1963 (the document which is referred to as Ext.P4 in the O.P.). It is stated that even though Ext.P5 objections were filed by the petitioner and ample opportunity was allowed by the District Collector to the Company for utilising the lands for the purpose for which they have been set apart, the Company was unwilling to do so. Subsequently the District Collector intimated the fact to the Taluk Land Board, Thalassery through his letter dated 8.9.1997, copy of which is produced as Ext.R1(a). On receiving Ext.R1(a), the Taluk Land Board conducted re-verification and issued a revised draft statement and individual notice to Mr.T.T.P.Muhammed, the present

Director of the Company, requesting him to participate in the proceedings of the Taluk Land Board and also calling upon him to file his objections, if any, to the demand for surrender of excess lands as mentioned in the draft statement. The petitioner ought to have filed objections to the notice and the draft statement; instead, the petitioner rushed to this Court and filed the present O.P. The conduct of the petitioner has not been fair. The plea of the petitioner that the ceiling case was finally closed as per Ext.P2 judgment of this Court is described as totally incorrect. Notwithstanding the judgment, the 2nd respondent had the freedom to initiate fresh proceedings in the matter as contemplated under Clause (k) of sub-section (1) of Section 81. Exts.P6 and P6(a) are therefore in accordance with law and are not liable to be interfered with. The statement refutes Grounds C and D in the O.P.

3. On behalf of the District Collector also, a separate statement has been filed which is more or less in terms of the statement filed on behalf of the Taluk Land Board. Over and above the contentions raised in the statement filed on behalf of the Taluk Land Board, it is contended in this statement that the impugned notice issued by the District Collector is under the provisions of the Kerala Land Reforms

Act and in accordance with the order of this Court in C.R.P.No.1288 of 1975. The District Collector after perusing Ext.P5 objections allowed three months' time from 24.1.1996 to the petitioner-Company for utilising the land for industrial purposes. After the expiry of the aforementioned three months, the Collector again authorised the Deputy Collector (LR) and Finance Officer to inspect the Company and ascertain the steps taken for utilisation of the property by the Company. The inspection revealed that the Company has not taken any steps for utilising the land. The Deputy Collector (LR) and Finance Officer inspected the properties of the Company in the presence of the Managing Director on 8.4.1997. That inspection revealed that the Company had not taken any action or step in the direction of utilising the land. Ext.R1(a) was sent by the 2nd respondent to the 1st respondent asking them to take steps as per law and that was why Exts.P6 and P6(a) were issued.

4. Elaborate submissions were addressed before me by Sri.U.K.Ramakrishnan, learned counsel for the petitioner and by Sri.K.J.Mohammed Ansar, learned Government Pleader. The submissions of the learned counsel were generally on the basis of the grounds raised and the documents placed on record by the respective

parties.

5. I find force in most of the submissions of Sri.U.K.Ramakrishnan. Under Ext.P1 proceedings, the Taluk Land Board has finally passed orders in the Ceiling Case of the petitioner having No.1219/73 (TLY). Under Ext.P1 the Taluk Land Board has directed the petitioner to surrender only 171.85 acres and the reason for that order was that there is no provision in the Act to exempt land which is set apart by the petitioner for industrial and commercial purposes. But in respect of 171.34 acres of land held by the petitioner-Company, permanent exemption was actually granted by the 1st respondent under Section 81(1)(c) of the Act and the decision of the 1st respondent exempting the said extent has attained finality since the same was not questioned by anybody before this Court or elsewhere. Therefore, Ext.P6 notice and Ext.P6(a) draft statement which purport to reopen the entire ceiling case in respect of all the properties including the extent exempted under Ext.P1 is per se bad.

6. It is seen that before issuing Exts.P6 and P6(a), the 1st respondent has not issued any notice to the petitioner at all. Before reopening the issue, the 1st respondent was bound to issue notice to the petitioner and give an opportunity to them to submit their

objections against reopening of the entire matter by the 1st respondent. To that extent, Exts.P6 and P6(a) are violative of the principles of natural justice also. The 2nd respondent-District Collector had issued Ext.P4 notice under the proviso to Section 81(1)(k) of the Land Reforms Act to the petitioner. The petitioner had submitted Ext.P5 objections to Ext.P4. The 2nd respondent is yet pass any order on Ext.P4 considering Ext.P5, after hearing the petitioner. It is obligatory on the part of the 2nd respondent to have passed an order under Section 81(1)(k) and to serve that order on the petitioner.

7. The other grounds raised by the petitioner are also worth consideration. But since the matter is being remitted back to the District Collector, I do not propose to express any opinion on the merits of those grounds. Exts.P6 and P6(a) are liable to be quashed and they will stand quashed. There will be a declaration that there cannot be any proposal to acquire 171.34 acres of land which has been exempted already and covered by Ext.P1 order and Exts.P2 and P3 judgments of this Court. The 2nd respondent-District Collector is directed to pass fresh orders, taking into account Ext.P5 written objections submitted by the petitioner to Ext.P4 notice. This will be done by the District Collector, after hearing the petitioner, at the

earliest and at any rate within three months from the date of production of a copy of this judgment.

The Original Petition is allowed as above. No costs.

(PIUS C. KURIAKOSE, JUDGE)

tgl

PIUS C.KURIAKOSE, J.

.....

O.P.NO.7699 OF 1999-N

JUDGMENT

18TH DECEMBER, 2006.

.....